

THE
HONOUR
AND
JUSTICE
OF THE
Present Parliament,
AND OF THEIR
Commissioners of Enquiry,
VINDICATED,
From the Calumnies and
Misrepresentations contained in a
late Pamphlet, Entituled, *The
Laws and Judicatures of Scotland
vindicated, &c.*

In a Letter to the Author.

Aliud Noctua sonat, aliud Cornix.

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EDITHAUL

THE
HONOUR and JUSTICE
 OF THE
PARLIAMENT,
 AND OF THEIR
Commissioners of Enquiry
 VINDICATED.

S I R,
 Have some where read of a certain great Nobleman, who being ask'd his Opinion of a Book, which like yours had made very bold with Men's Characters, made Answer, *That it was a very entertaining Piece.* This Epithet I shall presume to borrow from his Lordship for you Use, since you so

A 2 richly

richly deserve it from all Parties; having gratified some, displeas'd no Body, and diverted all your Readers.

But the unusual Warmth and Passion which is diffus'd throughout the whole of this Performance, I'm afraid makes People merry at the Author's Cost: for you appear over anxious for its Success to expect it with Indifference; and I am verily persuaded that your manner of arguing will spoil the best Cause in the World.

Pag. 3. One would guess you was over-run with the Spleen, when you thought fit to quarrel with the poor, harmless Title of the Pamphlet, to which the World is oblig'd for your extraordinary Production; and therefore to shun your Resentment as much as possible, I have been willing to comply with your Humour, having chosen a very splendid Title, fram'd according to the Model of your own. But in return for this Piece of good Nature, I hope you will not refuse the World a Civility of the same kind in your next Edition, by expunging at least two Words in the glaring Frontispiece, and putting into their Room others that may have a greater Affinity to the Subject. However, that the Alteration may be as small as possible, if you'll take a Friend's Advice, let LAWYERS be put

put for *Laws*, and for *Judicatures*, *Judges*: though I must confess, that even then it will be but a marr'd Piece of Work, for which at least an Amends ought to be made in the *Second Part*, which you tell us there is reason to hope will be publish'd in a little Time. This is humbly mov'd on the Reader's Behalf: But as for the Com—rs in particular, I believe I might adventure to demand one thing more in Justice to them, *viz.* that if the Author would be regarded, he may own his Production, and have a Name; in such a Case, they will perhaps do him the Honour to take some Notice of him. In the mean time, I hope you will not think yourself treated with any seeming Disrespect, whoever you be, in meeting with this Trouble from an Anonymous Writer.

My Province does not oblige me to be a Party in the Argument handled by the Author of *The Case, &c.* If you think you have got any Advantages over that Writer, I wish you Joy of your boasted Triumphs; but I am much mistaken, if it has not been the least part of your Design to answer that Piece: You had more lofty and passionate Views, than to take Notice of such grave Matters as are there handled, where you could possibly

sibly avoid them. Nevertheless, as these Arguments in Law shall happen to fall in my Way, I believe I may venture, (though I don't profess myself a Lawyer) with small Trouble to decide the Case, to the satisfaction of Impartial Judges. But you have carv'd out other sort of Work for your Answserers, you have laid them under an Obligation to vindicate the Methods taken by a Protestant Government for extirpating the Seeds of Popery, Jacobitism and Rebellion, for restoring the Nation to its former Tranquillity, and for distributing Justice equally, with relation to the Forfeitures, between the Publick and all others concern'd in them: And also to vindicate the Proceedings of H I S M A J E S T Y ' s, and the Parliament's Com—rs in the Execution of their Trust, from the most injurious Misrepresentations which you have with an unparallel'd Freedom given the World of them; and here indeed I confess you would often put your Answserers upon very mean Work; but I am apt to think you much mistaken in your Aim, and that the Dirt which you have so plentifully scatter'd about, has defiled none but yourself.

I believe no Body will doubt your Sincerity, when you say that the Title
of

of the Pamphlet led you to expect an Account of the Value of the Forfeited Estates, and of the Claims of Creditors, and nothing farther: there would have been no Harm in this: besides it might have serv'd to recover you from the Spleen, to laugh at a certain Gentleman, for whom you express no great Kindness, for his Officiousness in forwarding such a needless Performance to the Press. But as the Matter stands, you are very angry; being afraid, I suppose, lest it should mar the Cause which you so strenuously endeavour to defend; and this I confess it may probably do, with the favourable Help of your pretended *Answer*.

But the Description you think fit to give of the Nature and Design of that Piece, is very disingenuous and insincere. *An Apology*, say you, for the Struggles and Opposition that have been made to the Course of Law—The quite Reverse! as it appears to me. It may indeed be call'd a Representation of the Difficulties and Obstructions which the Parliament's Com—rs have met with from the Judges of Scotland, in the Execution of their Trust, contrary to the antient Laws of the Country, and to the express Statute of a British Parliament; which, as you add, already have almost ruin'd, and if continu'd,

continu'd, must entirely ruin many innocent Persons.

Pag. 4. To alledge that the Author of *The Case, &c.* pleads for having new Tribunals erected in Matters Penal, is talking very wide from the Purpose; and you are, I believe, the first Man, who ever imagin'd that the Com——rs sought to be invested with a Power to hang, draw and quarter. But you are so kind as to explain yourself a few Lines lower, and this terrible Tribunal quickly dwindles into a Court for the Determination of the Claims of Creditors on forfeited Estates, and that a very Partial one, in your Opinion, God knows!

However, it seems, you are aware that all this is *gratis dictum*, and therefore needs Confirmation, which you promise to give in your introductory Remarks, before you enter the Lists with your Adversary. Pray, Sir, give me leave to examine them.

Ibid. First, you say, it is certain that the Parliament meant a real Security and Encouragement to the innocent and lawful Creditors, &c. by the Act for Encouraging all Superiors, &c. and for this you quote the Preamble of that Statute.

Sir, you speak Truth like an Oracle! But I would fain know who has the Impudence

pudence to deny what you say? Does any one think that the Parl—nt of Great-Britain was a set of designing, equivocating Men, who would make fair Promises, but without an Intention to perform them? No surely! Nevertheless you take up a great deal of Room to prove this surprising Verity; and then solidly conclude, *It is therefore certain and must be acknowledg'd, that the Publick meant really what the Act does express.* Yet notwithstanding this certainty, I question verily much your ingenuous Confession. Your Manner of Expression for a whole Page together, amounts, at least, to a Doubt of the Parl—nt's honest Intentions in this Affair; though I perceive you have judg'd it necessary to shield yourself from Resentment, by an artificial Turn in the Stile. I know it's reckon'd no fair Dealing to force Concessions from an Author, by changing his own Words; but I'm verily persuaded, that I should do you no Injustice in reading you thus.

" There are doubtless many
 " Englishmen, that are byass'd ^{Pag. 3.}
 " enough by the Remains of National
 " Prejudices, to lay hold of any Oppor-
 " tunity, that might distress the Faithful
 " as well as the Guilty in Scotland, and

" that might break in upon the Laws and
 " Judicatures preserv'd and establish'd
 " by the Treaty of *Union*, in order to
 " lessen or perhaps root out the ancient
 " Nobility in that Part of the Country,
 " and break in upon the Entails and Set-
 " tlements of Families : Nor is it difficult
 " for Men of such Maxims, to find even
 " *Scotsmen* Tools vile enough to advance
 " such Ends. But I could hope, at least
 " for better Things, than that either the
 " Min——rs of State, or Two Houses of
 " Parl——nt should be capable of such
 " destructive Designs.

That you may not pretend I have inverted your Sense, I shall hereafter take Occasion to produce an Illustration of your Meaning from yourself.

Perhaps the greatest Liberty I have taken with your Words, is by changing the Word *some* (in the Beginning) for *many*, believing you might probably, on second Thoughts, rather chuse to have your Meaning so constru'd; unless you would be understood in a restricted Sense, to level your Shot only at four particular Men. But surely you could not have so much ill Nature as to think so! If this were true, I confess we might soon smell a Design somewhere. I'll engage it was not for nothing,

thing, that those wicked Men were pickt out, to be sent to *Scotland*! But was there no Body to stand up on the Behalf of his Country, and protest against the Appointment of such terrible Inquisitors? Was there not one Friend left in a *British* Parliament? Nay, must *Scotch* Parricides too, for dispatch sake, have been join'd with these inhumane Wretches?

I shall take my leave of this worthy Passage, with one other Remark; that is, in my humble Thoughts, you have us'd the Laws of *Scotland* with an unwarrantable Liberty, by making them to be, not a Terror, but rather on the contrary a Protection to Rebels; a Sanctuary or Shelter from the Hands of Justice, and to pull them out from these their strong Holds would be a Breach of the *Union*, which establishes the Laws. Now, I think, you are even with the Author of *The Case*, and certainly meant ironically in the Title Page, to call your Discourse, *A Vindication of the Laws and Judicatures of Scotland*. Whether this is not equally Criminal with *murmuring the Judges*, Pag. 4. to make such serious Sport with the Laws themselves, you might easily yourself resolve, were you so minded.

Having dwelt so long on your first introductory Remark, I shall discuss the 2d and 3d in a few Words, by referring you for a full and satisfactory Answer to the 13th and 14th Pages of *The Case*. And for an Answer to the last Particular, I would desire you to turn over to the 31st and 32d Pages of the same Pamphlet.

It would be Charity to think you did not read these Passages, before you publish'd your Discourse; otherwise there is reason to believe, that you would have shortned it by half a dozen Pages at least.

I shall pass by many little malicious Hints. For to trace you through all the Windings of your intricating Maze of Reasoning and Detraction, so artificially intermix'd in almost every Page, is a Drudgery which I hope you'll excuse me from.

Pag. 9. You deservedly extoll the Spirit of Clemency and Justice so natural to His MAJESTY, and to a Protestant Government, to that generous Spirit that shines throughout his excellent Administration. But this is soon forgotten, as you'll see when you turn the Leaf, where

Pag. 11, 12, 13. your Business is to oppose the gracious Conduct of a late Predecessor of His MAJESTY's to the severe Proceedings of the present Times.

You

You may perhaps, for ought I know, be a Well-wisher to the Revolution Interest, and an Adorer of King William's Memory; but certainly you take a wrong Course to persuade the World that it is so, while at the same time you speak so disadvantageously of the present Administration, and labour to extenuate and ridicule the Dangers to which the Nation has been, and is still, through the restless Endeavours of a Jacobite Faction, very much expos'd.

King William — overcame a State of Rebellion much more dangerous in Scotland — than the late inconsiderable Tumult, you would add — when that great Prince was engag'd in a heavy Foreign War; and consequently more provok'd, I suppose, to use Severities than — without extensive Forfeitures, new Commissions, new Laws, new Judicatures, according to the modern Practice you mean.

Then you proceed to evince the happy and grateful Consequences of so good a Conduct, but in the oddest manner I ever heard; you begin in one Sense, and conclude in another — It is true (say you) that the Sparks of Jacobitism were cover'd under the Tranquillity that follow'd, which undoes all you have said. But (you go on), these — would have been entirely extinguish'd

tinguish'd without new invented Rigours [such as those abovenamed] If — this If spoils all again. — It is also true that in the End of King William's Reign, the unhappy Proceedings in the Matter of Darien did kindle Divisions, &c. But — And in this consonant Manner you proceed to the end of the Chapter: And pray, Sir, what signify a Thousand such If's and But's to the Purpose you are driving at, or indeed to any Purpose, unless it be to impart to the World a new Art of Reasoning, hitherto unknown in the Schools?

You write like a *modern Convert*, your *old* and *new* Principles seem to struggle, which shall have the Victory. This throws you into much Confusion about the middle of this extraordinary Harangue, and occasions a staring Contradiction to drop from you unawares: *These Disturbances* (your Words are) *were* — *at last concluded by the Union*; and yet you add, with the same Breath, to this Effect, *that softer Means are still requir'd to calm the Minds of the People in Scotland*. The Use I would make of this, is, to shew how wavering a Man is, when he would defend a bad Cause. You attribute very *good*, and at the same Time very *ill* Consequences to the Union: But you are the first

first Man that ever dreamt, that it did put an End to the Disturbances in Scotland. It occasion'd fresh Disturbances at first, greater than the Nation had felt for many Years before, and which are yet far from being remov'd. However, I am not of your Opinion, that the present Government is answerable for these Misfortunes; neither do I believe, as you insinuate, that *the People of Scotland are insensible of the Happiness they enjoy, under the Establishment of a Protestant Government.* It were a great Injury to suppose, that Popery and Jacobitism have infected the generality of the People, and even contradicts your own Notion; so that I admire, how you came to stumble upon such an unlucky Expression, where your main Drift is to prove the inconsiderable Strength of Jacobitism in Scotland.

This elaborate Passage ends in a very heavy Charge of Partiality in the *British* Parliament towards the Church and People of *Scotland*, by insinuating that they are not taken Care of with the same Affection and Tenderness, as they would have been in a *Scotch* Parliament; and that untill they are better us'd, it cannot be expected they should lay aside their Prejudices. This I take to be a plain Inference from

from your Words ; though I must own the Period appear'd to me, at first Reading, to leave a Back-door for an Evasion, as if you did not intend to be understood to quarrel with the Conduct of the Administration towards that Country, but only, that it will require a Tract of Experience, to make the People sensible of the contrary : But then these Words **A T F I R S T** (p. 13.) would be Nonsense ; whereas I find they exactly agree with, and do fully confirm the former Construction of your Sense ; and your Meaning is, " That it is in vain to think of " quieting the Minds of the People of " Scotland, and inducing them to be satisfied with this State of Union, so long " as they are treated with such an Inequality : But if a **B r i t i s h** Government would " once begin to extend its benign Influence to that Country, and conspire to " promote its true Interest and Happiness " equally with the other Part of the Island, " the Body of the People would **A T F I R S T** " acquiesce, and by degrees come " to love a **G o v e r n m e n t**, whereof they " feel the Warmth and happy Effects.

Thus, Sir, you have spent almost two Pages together, in apologizing for the **M a l i g n a n t** (**J a c o b i t e**) **S p i r i t**, as you yourself call it, and a Fiery Flaming one too, as you make it.

it. And indeed, Tabor and Pipe never made such Melody as this Concordant Reasoning! Now, can you have the Conscience to desire your Readers to digest such crude and nauseous Inconsistencies as these? Certainly you believe they have a most extraordinary Concoction! You may persuade some sort of People to any Thing; But should the Pope in *Cathedra* talk at this rate, 'twould startle, I dare say, the most credulous of his Adorers. It is hard to bring one's self to believe that such gross and palpable Contradictions, such manifest and wild Absurdities should flow from an Author's Pen, who meant seriously; and therefore if I thought you would accept of this Apology for yourself; I could be ready to tax the Correctors of the Press, and conclude that they have omitted or inserted with an extravagant Liberty.

I am ready to lament with you the distress'd Condition of the Scotch Nation; and could heartily wish to see it in a way of Recovery. But if one considers the principal Foundation of this eloquent Address to the Passions of your Readers, it will be no difficult Matter to conjecture what rais'd the Storm, and what could as easily lay it. Let this new invented Rigor of a Commission be recall'd, and then all will

be well. Then both the Church and State will be past all Danger! — If you can persuade the Parliament to this, your Country will be highly oblig'd to you for so signal a Service. But till I see your Opinion more generally favour'd by the Wisdom of the Nation ; at least you must give me leave to think it a very frail one.

By the Confession of many of the Rebels themselves, the Government has shewn them abundance of Tenderness and Indulgence : And it is a Rule in all Civil Government, that the Magistrate not only may, but often ought to make use of violent Processes for the good of those who feel the Smart , and who wanting his Means of Information, and an equal Skill in Politicks, cannot be suppos'd, in any sort, to understand the adviseableness of so rigorous a Course. But what is all this to the Controversy with the Commission? 'Tis the Duty of the Commissioners to take Care, that the Publick Fund arising from the Forfeitures be not embezelled or alienated. And is not such a Trust necessary to the Creditors, as well as the Publick? This does not at all hinder the *foster Means* you speak of, nor bar the Parliament's Inclinations to farther Acts of Clemency.

Pa. 62. Nevertheless, I fear it will be found
dan-

dangerous, to come up to the full Extent of your political Scheme. The Prejudices of a disaffected Jacobite Party are not thus to be remov'd. *Lupus pilum mutat, non mentem.* To the Shame of many others be it said, they would tell you, that they are not to be brib'd from their Principles. This would be the ready way to bring the Government into Contempt, and render them unmanageable for the future. Animals might as soon move without Nerves and Muscles, as Governors manage Subjects that securely despise them. By the way, it is remarkable that you take no manner of Notice of the Objections made against this Scheme by the Author of *The Case*, for a very good Reason, I suppose, viz. because you could not Answer them. But this is not the first time that you have given him the slip, as I have already, and shall perhaps hereafter have another Opportunity to observe.

I have now gone through the first Part of your Discourse, which far from containing any Vindication of the Laws and Judicatures of *Scotland*, may rather fitly be call'd, what I know you will not like to hear, a _____
But that you should conclude these your Considerations to be agreeable to the

Pag. 13. Taste of one, who is a real Lover of his Country, and a hearty Revolutioner, is an extraordinary Piece of Extravagancy, and an imposition upon common Sense.

The second Part of your Discourse, which gives a critical Account of the Proceedings of the Commissioners of Enquiry in Scotland, deserves to be very strictly examin'd, since you have already sufficiently prepar'd your Reader to stand upon his Guard, and much suspect your Impartiality, unless a Man would credit what Ibid. proceeds from a partial Author, nay, a very partial one too.

But lest your Readers should possibly forget, that you are writing an Answer to *The Case*, you are so Civil as to take Notice of it by the by, and to make one short Step beyond the Title Page. But having through the unwary Confession of your Author, found out a mighty Secret,

P. 13. compar'd with P. 4. of The Case, &c. viz. (N. B.) That the late Rebellion had an Influence on Affairs of the greatest Importance to us all; flush'd with the Success, you make him attend your Leisure for 15 or 16 Pages more, till you have dispatcht your principal Affair.

Your

Your Charge upon the Commissioners is entirely concentrated in one Gentleman of their Number, to whom, you say, the Management of their Affairs in Scotland was chiefly left, but who his Brethren believ'd to have known better — 'Tis pity they should have been disappointed in their Man! — But surely this could not afflict you! By the way, you could wish he had known much less. You have us'd that certain Gentleman so disingenuously and opprobriously, that whoever is unacquainted with his Character, might imagine him to be a portentous Composition of Inhumanity and Avarice. However, since you have been so favourable, as not to part him from good Company, I am apt to think he will not quarrel with you for what is done.

It will, no doubt, be acknowledg'd on all Hands, what you say, that the sweet Point of Fingering of Money was the Origin of those Contentions in Scotland, concerning the Forfeited Estates. *The Love of Money, we know, is the Root of all Evil.* But that this should tempt the Parliament's Commissioners to exceed the Limits of their Power; to decry the Laws and Judicatures of the Country; and to raise against them the Indignation of

of the King and Parliament, were, without very good Proofs, at least ill Manners to suspect. And therefore, Sir, I hope I shall be excus'd from taking it, upon your Assertion, till I have examin'd the Evidence. 'Tis a Trespass upon the Reader's Judgment, to work him up to a Prepossession in favour of one side of the Argument, as you have study'd to do
Pag. 13, in two large Pages, before you enter upon the Debate.
14, 15.

The whole Complaint, I find, is lodg'd
Pag. 16. in this single Article, viz. *That the Commissioners pretended to a Power of appointing Receivers [or Factors] on the Forfeited Estates, and of directing the Payment of the Monies from thence arising, into the Exchequer, as they should order, contrary to the Authority they acted by.*

Now, Sir, that this is a wrong Accusation, and that the Commissioners had actually such a Power invested in them, and consequently might very lawfully claim and execute the same, is my humble Opinion, for the following Reasons.

First, They are by the Act of Enquiry expressly authoriz'd, from time to time, to Appoint and Employ such Persons, whom they shall think proper, during the Pleasure of the said Commissioners, or any four or more of them

respectively, to be Registers, Clerks, Surveyors, Messengers, or OTHER NECESSARY OFFICERS, &c. It being plain from this Clause, that the Commissioners have a Discretionary Power to appoint what Officers they shall think proper, or are necessary for the Execution of the Act; why might they not appoint Stewards as well as other Officers,

*See the Report, fol. 6. and
the Appendix, fol. 6.*

when there appear'd to them an absolute Necessity for so doing? Without this, as Matters stood, all their other Actings would have been to no Purpose, the principal Design of their Commission would have been subverted, and the Act itself render'd useles and ineffectual. The Consequences of the Obstructions they met with from the Judges in this Particular, is a Demonstration of what I have said.

Secondly, The Commissioners assum'd no new Authority in obliging the Receivers, of their Appointment, to pay the Rents into the Exchequer; for this was only a necessary Consequence of the Powers they were invested with for naming such Officers.

Thirdly, It was no Transgression of the Act, to oblige the said Receivers to pay the Monies as aforesaid, conform to the Orders

ders of the Commissioners to be given for that Purpose. The Expediency of this is plain, by which the Hazard of troublesome and expensive Prosecutions against the said Receivers, for Recovery of the Rents out of their Hands, might be obviated. And what you are pleas'd so positively to assert (p. 16.) is utterly false, viz. "That in every Clause of the Act where Rents or Money is appointed to be paid in for the Publick Use, the Payment is directed immediately into the Exchequer. For there are * two Clauses in the Act, whereby the Commissioners are empower'd to order the Payment of the particular Monies and Profits therein express'd into the Exchequer, at such Days or Times as shall be appointed by them." Nevertheless you have rais'd a great deal of Dust about this insignificant Point, making it the Ground of a pretended Quarrel between the Commissioners and Barons of Exchequer, whereby (to use your own Phrases) you shew the greatest Malice to carry your Point, and become an officious

* See in the Act for appointing Commissioners to Enquire, &c. the Clause concerning Personal Estates, and the Clause concerning Persons being responsible for the Profits, who have entred upon the Forfeited Estates.

officious private Medler in the Argument.

The Barons have made no Complaints against the Proceeding of the Commissioners, nor did they in the Conference held with them signify any Dissatisfaction with what they had done.

*See Appendix to
the Report. f. 56.*

It were very unjust, to tax the Commissioners or any of their Number with sinister Ends, in this Affair of appointing Receivers, unless it could be prov'd that there was no occasion for such Officers. But they give Reasons in their Letter to the Lord T——d of the 23d of October, to which I have already referr'd, which must convince any rational Man of the Necessity of such a Course. And what farther confirms my Belief of their Disinterestedness is, that, as appears by their Report, they would have acquiesc'd with the Appointment of the Receivers chosen by the Creditors, provided they would have paid the Rents by them receiv'd,

Report. f. 5.

into the Exchequer, or given Security for doing it afterwards, conform to the Directions of the Act of Parliament: It was upon their Refusal therefore, that the Commissioners came to the Resolution of appointing such Officers, whereby the principal Design of the Act might be

D ful-

fulfill'd. Nay, they mention in their Report, that they found, upon Examination, this to be the Method always practis'd, where the Rents of Lands are payable into the Exchequer in *Scotland*. And that in the Appointment of those Receivers they were not guilty on any Encroachment upon the Jurisdiction of the Court of Session; but had confin'd themselves strictly to the Directions of the Act appointing them, is manifest from this Consideration, that, as appears by the Copy of the Constitutions of such Receivers in the *Appendix N° 5*; they had no Powers given them to *Distain* upon the Tenants for Non-payment of Rents. Now if the Commissioners would in any Case have adventur'd to take a Latitude, by stretching the Powers given them by the Act of Parliament, it would doubtless have been here, since it was their not having Powers to *Distain*, which frustrated the End of the Appointment of those Receivers. It is therefore highly injurious to insinuate, that Men were prompted by private Fordid Views in the Execution of so necessary, just, and reasonable a part of their Publick Trust.

But the Nature of this Discourse does not oblige me to enter into a Vindication of the Commissioners, or any of them, in their Per-

Personal Characters, neither do I think they stand in need of it. It is a sufficient Recommendation of them to their Country, that they have hitherto made a faithful and conscientious Discharge of the Publick Trust repos'd in them by the *British Parliament*, and that they have not in any Sort incur'd the Displeasure of their *Awful Masters*, an Appellation you find much Fault with, which yet I ^{P. 19, 38.} think might be us'd, without Offence, to the next greatest Power in the Nation.

But it seems they have not had the good Luck to please every Body, and indeed I don't know how they should. The Author of *The Case*, reckons up four Sorts of People, who ^{See The Case,} _{P. 36.} don't like this Commission.

But that the Judges should have made War with them, must indeed be very surprising to every one who has not been at leisure to consider the Grounds of it. For my Part, I have had no particular Opportunities of being inform'd in this Point, or in any other Matters relating to the Affairs of the Commission. However by what is already made Publick on the Head, one may be able to form a modest Judgment concerning this Dispute, without waiting for the *More Particular Account*, which is promis'd.

P: 15, 19. You have put the whole Issue
of the Controversy upon the suc-
cess of this single Point, of the *Power of*
appointing Receivers. Now I think I have
sufficiently made it appear from the express
Words of the Act, that the Commissioners
have such a Power given them by Parlia-
ment, and therefore the Controversy held
with the Lords of Session on this Head,
was not an Usurpation, as you call it.

But supposing the Commissioners had pre-
tended to a Power to which they had no
shadow of Right, yet I admire how you
See the Report, fol. 8, 9. can charge them with Usur-
pation for applying to the

Lords of Session, according
to due Course of Law. For as to the
Letter they sent to the Judges, this is en-
tirely out of the Question, as not being ad-
dress'd to them in their judicial Capacity,
but only in consequence of the private
Conferences which had been for some time
before carried on between them and the
Commissioners, on the Invitation of the
Lord President of the Session himself, con-
cerning the Subject of the Sequestrations,
and of the Factors appointed by their Lord-
ships on the Forfeited Estates. And if
you'll but cast an Eye to the *Appendix*
N° 6. fol. 12. you may there find that
this

this Letter was sent by way of Answer to a Proposal from the Judges by the Lord President, and which the Commissioners then told his Lordship, they would take under Consideration. I know not whether any such Apology was made in the Courts below, but it seems to have Force enough itself, without any other to overthrow your heavy Charge of Usurpation, and there is no Parallel between that Letter, and the Instance you have quoted.

The Liberty that was taken with the King's Advocates Name, which I perceive to be a Matter of pure Form, is what I shall not take upon me to Answer for, being a Stranger to such Things. However, it was according to your own Confession, but a *kind* of a very small Offence, if any, and especially considering it was necessary, as I suppose, for the Publick Service; and the Advocate General himself did afterwards consent to the Use that was made of his Name.

There is Proof enough in the Report to convince any impartial Man, that as on one Hand the Commissioners were resolutely bent to conform themselves strictly to the Duty of their Commission, so they shew'd all possible

See the Report, fol. 8.
Appendix
No. II.

ble Caution on the other Hand in their Procedure before the Court of Session ; and even in that very Letter, which you are pleas'd to call an Usurpation of the Authority of the House of Peers, without Appeal, they express themselves thus, towards the Conclusion, *We assure your Lordships, that nothing has so long kept us from performing that express Part of our Duty, (viz. the appointing Receivers) but a profound Regard and Respect to your Lordships, in Compliance with which we think we have already hazarded ourselves more than we can well be answerable for.*

P. 21, 22, 23, 24, 25. But still you'll have these Gentlemen to be in the Wrong, because, say you, they knew at the same Time they had no such Powers as they assumed, and this you endeavour to prove in a tedious empty Harangue : But the true Matter of Fact amounts to no more than this, viz. The Commissioners in the Memorial to the Lord T——d of the 5th of October, represent the Necessity of appointing Receivers, but in regard there seem'd to be some Question as to the Power of the Commissioners as to this Point, they had not then come to a Resolution in it. And in their Letter to his Lordship on the 23^d of October, they still insist on the Necessity of appointing

pointing Receivers: But it does not appear by that Letter, that they had even then come to a Resolution, as you are pleas'd to observe from it; on the contrary they conclude, that their Affairs would be in some suspence, till they receiv'd the Honour of his Lordship's Answer. Nor indeed did they afterwards enter into any such Resolution; for here they meant Receivers, *with sufficient Powers* See Appendix,
fol. 6. *to prevent the Rents of the Forfeited Estates from being sunk or withdrawn;* and they never pretended so far as I can see, that the *Letter of the Law* was for them in this Sense. Neither had their Receivers any such Powers given them. So that this mighty Objection evanishes, on which you lay such a wonderful Stres; and you must acknowledge that you have either very cursorily read the Passages in the Report and Appendix that relate to this Affair, or purposely taken the Advantage of the double Meaning of the Word *Receivers*, thereby to impose upon your Reader's Judgment.

Just such another Piece of Sophistry is your second Noble Observe, concerning the abovemention'd Letter to the Lord T—d, where in order to fix an Absurdity upon the Commissioners you say, that " by the
 " 22d of

" 22d of January, they had brought themselves up to a Belief, or were willing to impose it on the World, that the *Letter of the Law* was for them ; and thus they end their Answer, (say you) to His MAJESTY's Advocate's Memorial, *We are fully persuaded, we have the very Letter of an Act of Parliament to go by.*" Now if you can produce one Word, either in the Letter or Memorial, that has the least Tendency to this Affair, I'll quit the Cause. Your other Remark concerning the said Letter, might well have been spar'd, since the Reflection thereby intended falls upon another's Head, and not, as you meant, on the Commissioners. But it were endless Work to retort every rhetorical Gib ; and I cannot but observe, that a Cause must be very near expiring, when the want of solid Reasoning is supplied with bitter Invectives. To add no more on the Head, It is most certain, that the Commissioners have strictly conform'd themselves to the Directions of the Law. And if the Wisdom of the Nation had been equally obey'd in this Affair by others ; there would no Inconveniences have follow'd either to the Publick, or to the private Interest of lawful Creditors : And the Peace and Tran-

Tranquillity of the Country, would in a great Measure have been restor'd.

Now, since you have taken an extraordinary Liberty in ransacking the Conduct of Persons who act by a Commission from the Supreme Power of the Nation ; I hope I may venture, without incurring the Reproach of *murmuring the Judges*, to take some small Freedoms with the Court of Session, for whose sake these Gentlemen have unhappily fallen under your severe Displeasure.

The Thing to be examin'd, as you state it, is, *Whether the Court of Session hath acted according to Law in this Matter*, viz. in *Serquestring the Forfeited Estates, and appointing Factors or Stewards to receive the Rents thereof for the Behoof of the Creditors on the said Estates.*

You answer in the Affirmative, and support it with one only slight Reason, viz.
 " The Creditors having their Debts,
 " Rights and Diligences preserv'd unhurt,
 " were at Liberty to sue for Security and
 " Payment, as if no Attainder or Forfeiture had happen'd, and by necessary
 " Consequence the Judges were bound to give them Justice and Dispatch.

Now, I deny this to be a necessary Consequence, for the following short Reasons.

E First,

First, It can be no hurt or prejudice to the Rights of Creditors, to have the Determination of their Claims suspended, till the Parliament shall think fit to give farther Directions See Appendix, N^o 1², fol. 26. in this Matter. Certainly the Wisdom of the Nation is of this Belief; and it would have been impertinent to declare in the Act of Enquiry, that *Act or Acts shall be made and pass'd in Parliament for hearing and determining the said Claims,* if the Lawgivers had intended, that the Demands of Claimants should be determined in the ordinary Course of Law, without any Regard to the passing of such future Acts.

Secondly, The Jurisdiction of the Lords of Session does not at all extend to the seizing of the Possession, or alienating Lands, which are vested and adjudged to be in the actual and real Possession of the Crown, and that, *without any Office or Inquisition thereof hereafter to be taken or found.* For this were to suppose the Judges to have a Power above the Parliament.

Thirdly, The Lords of Session acted contrary to the express Authority of Parliament, in prohibiting and hind'ring the Rents of the forfeited Estates to be paid into the Exchequer. And it is a very poor Excuse to alledge,

alledge, That their Receivers are only Keepers or *Custodes* of the Possession, lest the Rents should perish; for this cannot warrant a direct Breach of the Law, and is to prefer private Security to the publick Faith and Parliamentary Engagements.

Fourthly, Though no particular Act had pass'd, vesting His MAJESTY in the actual Possession of the Forfeited Estates; yet the Lords of Session have no Authority to levy, grant Acquittances of, or apply any Publick Fund, even for the Payment of just and lawful Debts affecting the same. This is the sole Pre-rogative of the Parliament. See K. J. II. and K. W. Acts.

And it appears by several Scots Acts of Parliament, that the Crown itself could no dissolve or alienate Lands belonging to it, by Forfeiture, even for valuable Considerations, without the Consent of Parliament.

Fifthly, There can be no Instance given, that the Lords of Session ever sequestred any Estate forfeited to, and in the Possession of the Crown. It is therefore strange that the Judges should now pretend to such a Power, without a Precedent.

These, Sir, are such undeniable Arguments against the Legality of the Proceed-

ings of the Court of Session in this Affair, that they do not require any elaborate Harangues to explain and enforce them.

As to what you bring in support of your Argument in Justification of the Proceedings of that Court, it is not only foreign to the Affair, but extremely trifling. You argue upon a wrong Supposition, that no Forfeiture has taken place. So that at this rate, His MAJESTY and the Publick have nothing to do with those Estates, and consequently either the Forfeiting Persons themselves, or no Body at all, has any Right or Title to possess the same: However, I am content to waive this, and grant what you advance in general concerning Arrestments to be very good Law. But in the present Case you are wide of the Argument, for you endeavour to prove one Point, by another equally disputable. The Lords of Session ought not to have given an Order of Court at the demand of a Creditor, for arresting any Personal forfeited Estate vested in His MAJESTY, for much the same Reasons that they ought not to have sequestered any real forfeited Estate.

To conclude this Head, The Judges have brought themselves under a notable Dilemma. Were those Sequestrations and Arrestments granted according to Law or no? I know you will not answer in the Negative, for this would be giving up the Question. If then you maintain the Affirmative, as consequently you must, I shall render it as evident, as any Mathematical Demonstration, that this would necessarily involve the Judges in a very grievous Crime; and conclude them guilty of the highest Injustice
to

to the Creditors themselves, by which many a poor Family has been starv'd, as you intimate. For by the same Law that ^{Pag. 33.} oblig'd them to grant the Sequestrations and Arrestments, they ought to issue out other Processes of Distress upon Lands or Personal Goods, in order to Payment, if demanded. But the Creditors are effectually debarr'd from obtaining this Justice, by the following Resolution of the Judges, (as the Lord President signified to the Commissioners in their second Conference, *viz.*, *not to grant any Decrees of Possession to Creditors on Forfeited Estates, nor to apply any Part of the Issues and Profits of them to the Use of the Creditors, till the Parliament shall make farther Provision, and give farther Directions concerning the Method of paying Creditors.* Here was Partiality with a Witness! And what follows, does not at all mend the Matter, *viz. That they were resolv'd to make use of their Forms to that End.* This rather makes it worse, by casting an *Odium* upon such Methods of Proceeding, as serve to support and countenance the greatest Injustice. And how this agrees with what the Lord President told the Commissioners in the first Conference, *That Decrees of Possession in favour of Claiming Creditors could not be deny'd by them, without Breach of their Duty, and Injustice to the Subject,* I confess I am at a great Loss to determine. What if no such A&C of Parliament should be made for twenty Years to come? The Judges have a ready Answer, *That the Method of Proceeding before their Court will afford them Opportunity to delay such Decrees.*

*Appendix,
fol. 11.*

*Appendix,
fol. 9.*

*Appendix,
fol. 11.*

Put,

Pag. 27. But, Sir, is this giving *Justice* and
 DISPATCH to Creditors, as they are
 bound to do by your own Confession? And is
 it the way to preserve many a poor
 Pag. 33. Family from Starving? — Truly, Sir,
 if I were one of your poor Creditors, I should
 think myself but little oblig'd to you for such
Justice and *Dispatch*.

And what is become of the Rents of all these
 Forfeited Estates since the Rebellion? Why
 truly, they are very well secur'd! But where?
 The Exchequer (in the Opinion of the Judges
 of Scotland) is not a safe Repository. Nor is Par-
 liamentary Security sufficient for so considerable
 a Fund. No! the Judges therefore in such a
 Case can dispense with a positive Law, which
 provides, that all Monies arising from the For-
 feitures, shall be paid into the Exchequer; They
 have found out safer Hands to entrust it withall.
 Here is a Mystery which must be unfolded!

In short, I find the Case is thus. When the
 Friends of the Forfeiting Persons found, that
 the Government was in earnest with them, by
 vesting His MAJESTY, for the Publick Use, in
 the Possession of their Estates; his Method
 of Sequestration was invented, and Persons
 nam'd by the pretended Creditors, who apply'd
 for it, were by the Judges appointed Receivers
 of the Rents: By this Means the Possession is
 still secur'd to the Forfeiting Persons, the Rents
 being in the safe keeping of their own Rela-
 tions or former Trustees (very few excepted) Men
 noted for Jacobitism and Disaffection, as may
 be seen particularly in the Appendix to the Re-
 port, N° 14. fol. 41. And according to the afore-
 said

said Resolution of the Judges, the whole Rents of the said Estates are to remain with those Receivers, untill the Parliament shall give Directions concerning the Determination of Claims affecting the same. Here is one Advantage; But there is a greater in view. The Rebels and their Friends had the Vanity to hope, that a succeeding Session of Parliament would restore them to their Estates, and that thus the Stewards would not be call'd to an Account for the Rents by them already receiv'd. But even if this should fail, there's another thing yet behind. And that is, as I observe from the Five hundred Pound-Scheme, they have a Prospect of carrying off those Estates by fraudulent Claims. It is most rational to suppose this, when one but reflects how many of those Sequestrations were obtain'd, by Persons who shew'd not the least Title to a Debt, or mention'd the Extent of their Claims. I shall refer you for Particulars, to the Observations in the Appendix N^o 14 fol. 41 before cited. [By the way I must observe on this Occasion, that you have examin'd the whole Affair very perfunditorily, since (at least as you would make us believe) you knew nothing of such Observations being publish'd, and have therefore sharply tax'd the Author of *The Case*, for not acquainting the Publick with it, at least by way of Appendix.]

Now this Proposal of entrusting a single Person with Powers to insist on the behalf of His MAJESTY, and the Publick, for the Determination of the Claims on Forfeited Estates, will certainly answer the Ends and Wishes of such pretended Creditors most effectually, and is indeed

deed the only best Expedient that could be devis'd for accomplishing the Designs of some People, who extravagantly aim at dividing the whole Publick Fund, arising from the Forfeitures, without letting the World know how. Such a Person having no Superintendent, will consequently have an unlimited Power, which will enable him to distress or favour whom he pleases. He may wrangle with some, who have a Right, 40 or 50 Years, and suffer others to rob the Publick who have none, without any defence on its behalf, or may perhaps take a more solemn Way of cheating it, by making only a shew of opposition. A Decree of the Court of Session will be interpos'd without Appeal where he is so minded; and he may entirely if he pleases give up the Publick Interest, since his Conduct is never to be examin'd, no not by the Parliament itself.

This is a short View of the Nature of your laudable Scheme, which must excite a very frightful Idea of it in every honest Breast. And now if you are indeed a sincere Well-wisher to a Protestant Government, a Lover of your Country, and a truly honest and compassionate Man, for the Love of God, lay aside your private Resentments (which, as appears through the whole of your Performance, have hurry'd you to an unaccountable Excess) and let the Publick Good have the sole Command of your Passions. Otherwise you must give all Wise Men leave to apprehend your Hypocrify; and that these Noble Topicks, which embellish and adorn your Discourse, are wilfully abus'd to serve the worst of Ends.

I thought to have added something concerning the Clauses in the New Bill for enlarging the Powers of the Commissioners of Enquiry, but I am afraid I may have already exceeded the propos'd Limits; besides I reckon that Affair will be publickly canvass'd in Parliament, before this Letter can see the Light. I shall only say thus much in favour of those Clauses: That on one Hand the lawful Creditors have a Prospect hereby of having their clear and indisputable Claims determin'd, without Law Suits, which cannot be avoided by the former Proposal; and on the other Hand the Publick Interest will be effectually secur'd, all their Proceedings being to be subjected to a Parliamentary Inquisition, and that a very strict one, if we may conjecture what will be, from what has already happen'd.

London 14 Febr.
ary, 1717-8.

I am, &c.

F I N I S.

